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IN THE COURT OF APPEAL

C.A. No. 58/65

BEFORE: The Hon. Mr. Justice Duffus (President)
 The Hon. Mr. Justice Henriques
 The Hon. Mr. Justice Waddington.

R. v ERIC MURPHY

Mr. F. Phipps appeared for the Crown.

Mr. Dudley Thompson, Q.C., appeared for the appellant.

18th October, 1965.

DUFFUS, P.:

This is an application to the Court for leave to appeal against the conviction in the Circuit Court for St. Ann, of the applicant on an indictment containing two counts, the first count charging him with embezzlement of the sum of £89. 12/- which was alleged to have been received by him for and on behalf of Martin's Tours Ltd., with whom he was working as a clerk or servant; and the second count charging him with falsification of accounts in that he, the applicant, had omitted to enter in certain records of the company, the sum of £89. 12/- which had been received by him for and on behalf of Martin's Tours Ltd. from one Stanhope Joel.

Complaint is taken of certain directions given by the learned Trial Judge in the course of his directions to the jury and in particular, those directions given by him when the Foreman of the jury returned to the Court after a short retirement and asked for further information on the evidence. The facts, briefly, are as follows:

The applicant was employed as a cashier to Martin's Tours Ltd, at the relevant time in 1963. Martin's Tours Ltd

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maintained a branch office at Ocho Rios in St. Ann, and Martin's Tours were agents for Hertz Rent-A-Car Company. One Mr. Stanhope Joel, a visitor to Jamaica, through his agent in Jamaica, Ian Pringle of the firm of Lord Ronald Graham & Co. Ltd had arranged for the hire of a motor car during 1963. Pringle paid in a cheque for One Hundred Pounds at the Ocho Rios branch of Martin's Tours. This cheque for a hundred pounds was received by a Mrs. Chung working in that office, to whom fell the duty of looking after the Hertz Rent-A-Car transactions. Mrs. Chung issued a cash receipt for £89. 12/- "deposit on rental of a motor car."

Mrs. Chung, in her evidence, stated that she handed the cheque for one hundred pounds to the applicant, together with a duplicate of the cash receipt on a yellow form, with instructions that he enter £89. 12/- to the proper account for the motor car transaction and that he retain the change of £10. 8/- for Joel's account as it was anticipated that there would be another motor car hireage transaction by Joel shortly after this one. Mrs. Chung despatched, according to the practice of the two firms, a pink copy of the cash receipt to the Hertz Rent-A-Car Co. at their head office in Montego Bay, and they in turn, sent this pink copy of the receipt to Martin's Tours head office in Kingston, so that the amount of £89. 12/- could be paid over by Martin's to Hertz.

Martin's head office in Kingston did not receive any notification from their Ocho Rios office of the receipt of the £89. 12/-. This notification would have been conveyed to the Kingston office of Martin's, in the form of a return which it was the duty of the applicant to prepare and send to the Kingston office, together with the yellow copy of the cash receipt. Mrs. Chung, in her evidence, stated that she had given the yellow copy of the receipt to the applicant.

The Bank of Nova Scotia in St. Ann's Bay, maintained

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and account for Martin's Tours Limited and witnesses employed at that bank identified the cheque for one hundred pounds which was given by Pringle to Mrs. Chung; and evidence was given by the cashier from this Bank that he had cashed the cheque for one hundred pounds and paid this sum of money over to the applicant, E. B. Murphy, who had endorsed the cheque for Martin's Tours Ltd. The cheque was a crossed-cheque and normally one expects crossed-cheques to be passed through an account at the bank, but in this case, the cashier stated, there was an arrangement with Martin's Tours whereby crossed-cheques would be cashed over the counter by the bank, for Martin's Tours.

When the head office of Martin's Tours in Kingston received information from the head office of Hertz in Montego Bay that this amount - £89. 12/-, had been received by the Ocho Rios office but its receipt was not reflected in their account from the Ocho Rios office, they made enquiries into the matter and officials of the Kingston office interviewed the applicant who was summoned to Kingston. The Applicant in the course of that interview, informed the officials of Martin's Tours in Kingston in effect that he was very busy at Ocho Rios and he may have received the yellow form for the Joel transaction and if he had received it he would have put the same in the vault which he was in charge of as cashier, together with the money; and if the money had disappeared and if the yellow receipt had also disappeared, that he accepted no liability for it as other persons had access to the vault. He did not inform the officials of Martin's Tours in Kingston whether or not he remembered this particular transaction and whether or not he had received the yellow form for £89. 12/- from Mrs. Chung, or the cheque for a hundred pounds drawn by Ian Pringle.

Further investigations were made. The Police were

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called in and the applicant was arrested and charged for the offences for which he was tried at the Circuit Court. Mrs. Chung gave evidence and she was cross-examined by the applicant, who was not represented by counsel, but he did not put to her in cross-examination that she was not speaking the truth when she testified that she had handed the cheque for one hundred pounds to him together with the yellow copy of the cash receipt for £89. 12/-. In fact, it would appear from her cross-examination that he might have been challenging the fact that he had received the one hundred pounds from her because he asked this question:

Q. Mrs. Chung, can you prove to the Court that the cheque for one hundred pounds had connection with car?

A. Yes. I told you.

His next question was:

Q. Have you any tangible evidence that you did give me that cheque?

Her answer was, "Your signature is on it."

The applicant gave evidence on oath, and for the first time in the course of the trial or in the course of investigations into the matter by Martin's, stated that he had received the cheque for one hundred pounds from Mrs. Chung. He then swore that Mrs. Chung had asked him to cash this cheque for one hundred pounds out of what he called his "float account" which presumably, was an office imprest account of cash he was permitted to keep. He said: I distinctly remember cashing a cheque from my "float" for Mr. Stanhope Joel in the amount of £100 and I subsequently cashed this cheque at the Bank of Nova Scotia in Ocho Rios and returned the money to my "float;" and with regard to the yellow copy receipt which Mrs. Chung swore she had handed to him, he said that he had not received it from Mrs. Chung and that as far as he knew the cheque for £100 and the receipt for £89. 12/-, for which he was shown the pink receipt in Kingston at Martin's Tours office, had no connection whatsoever; and in answer to the learned

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judge he said this: "Mrs. Chung said she gave the yellow copy and the cheque for £100 to me and said I should keep the change, but she never did, she only asked me to cash the cheque. She asked me to cash it for her, which I did, and gave her the cash for it."

Well, as the applicant had not cross-examined Mrs. Chung on this allegation which he was now for the first time making, the learned trial judge recalled Mrs. Chung and asked her whether she had received cash in the sum of £100 from the accused with respect of the cheque. She said no. The applicant was then invited by the judge to cross-examine Mrs. Chung and he proceeded to do so but he did not in the course of his cross-examination put to her a single question in support of his story, that he had cashed the cheque for £100 for her and had given her one hundred pounds cash. Instead, he cross-examined her with regard to the change of £10. 8/-; but again, his questions appeared to be very evasive. He did not suggest to Mrs. Chung that she was lying when she stated that she had told him to keep the change of £10. 8/-. Instead he asked her why had she not mentioned to the Branch Manager in Ocho Rico that he had £10. 8/- in change.

The learned judge, summing up to the jury, said this to them when they came back for further directions:

" The accused said he got this cheque for £100 from Mrs. Chung who asked him to cash it for her. He said he cashed the cheque for her, handed the cash to her and he subsequently went to the Bank, got cash for this cheque and placed it back in his Imprest Cash from where he had got the cash he gave to Mrs. Chung. As I have said, you have heard the evidence in the case, and it is a matter for you to say what witness you believe and what witness you disbelieve, and what reasonable inferences you will draw. If you accept what the accused told you, that is, Mrs. Chung asked him to change the cheque for £100 and he gave her the cash for it and that this money was not for the account of Martin's Tours and since it is not accounted for

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according to the evidence, then perhaps it would seem that Mrs. Chung misappropriated the money herself. If you accept that she did so, then the accused would not be guilty. If you have a reasonable doubt, there again he would not be guilty. Then you will also have to ask yourselves if Mrs. Chung had misappropriated the money would she have sent out the pink copy to Hertz Rent-A-Car in Montego Bay."

Learned counsel for the applicant objected strongly to the suggestion by the learned judge that it was being put forward by the applicant in his defence that Mrs. Chung may have misappropriated the money and he submitted that the effect of this suggestion was to bias the jury against the applicant. He urged that no such inference should have been drawn from the evidence as a whole or from the allegations made by the applicant -

- (1) that if the money was missing from the safe somebody must have taken this money, that is somebody connected with the office; and
- (2) that he had cashed the cheque for Mrs. Chung and given her the sum of £100.

Learned counsel for the Crown, in reply, stated that the only reasonable inference to be drawn from the allegations which had been made by the applicant was that Mrs. Chung must have misappropriated the money because it was being put forward by the defendant that he had handed over the money to her and as learned counsel for the Crown pointed out, Mrs. Chung having stated in her evidence that the money which she had received from Pringle was for a specific transaction, namely, for the rental of a motor car for Stanhope Joel from the Hertz Rent-A-Car Co., and as this money had not been received by Hertz Rent-A-Car or by Martin's Tours in Kingston, or the Bank of Nova Scotia for Martin's Tours in Ocho Rios, the only possible inference remaining was that Mrs. Chung herself must have misappropriated the money. It seems to us that this was a perfectly reasonable inference for the learned judge to have drawn on the state of the evidence as a whole

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and on the defence as stated by the applicant.

It is our view that there was ample evidence on which the jury could have arrived at the verdict they did arrive at if they accepted Mrs. Chung as a witness of truth, and it is not surprising that they accepted her evidence in preference to that of the applicant, in view of his "keeping up his sleeve" until the very last minute, as it were, the suggestion that Mrs. Chung had received the £100. For these reasons, the Court refuses the application.

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